



Technical Trade Report

Updates on Key Trade Policy Issues Affecting APHIS

April 1997

CONTENTS

- **Introduction**
- **U.S.-Chile Trade Issues: Where does APHIS fit in?**
- **Overview: "Fast Track" Authority and How It Works**
- **International Plant Protection Convention (IPPC)**
- **INTERNATIONAL MARKET EXPANSION AND TRADE NEGOTIATIONS (Animal Health Perspectives)**
- **APHIS' Role before International Standard-Setting Bodies**
- **APHIS' Pacific Rim SPS Strategy**
- **The PROPOSED USDA REGIONALIZATION REGULATION**

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<<http://www.aphis.usda.gov/is.tst>>

Introduction

Established at a time when the United States was in the throes of negotiating the NAFTA and GATT Uruguay Round Agreements and trying to manage a proliferating number of sanitary and phytosanitary (SPS) issues with its trading partners, the APHIS Trade Support Team (TST) was envisioned to operate as a nimble coordinating and planning body able reach across unit lines to bring focus to Agency trade issues. The Administrator wrote to the Assistant Secretary in a 1992 memorandum that creating the TST "...will be a significant step in improving internal cohesion and departmental coordination on technical trade issues" and that "such coordination will ensure that APHIS' biosecurity objectives are effectively advanced in current and upcoming trade negotiations."

In the 1992 memorandum, several basic functions were assigned to the TST, including:

Coordinating the collection, assembly, analysis, and sharing of trade-related information needed to support APHIS participation in trade negotiations or bilateral and multilateral technical meetings.

Attending, and when appropriate, representing APHIS at meetings with other USDA and U.S. Government agencies.

Facilitating intra-agency coordination and APHIS cohesion on trade matters.

Strengthening APHIS relations with the Foreign Agricultural Service (FAS), Office of the U.S. Trade Representative

(USTR), and the Department of State (DOS).

Monitoring and tracking APHIS technical commitments in a trade issues data base.

Improving APHIS communication with U.S. agricultural interests regarding trade related issues.

Since its inception in January 1992, the TST has undergone multiple reviews of its purpose, functions, structure, and/or effectiveness. By 1994, an APHIS Management Team (AMT) re-evaluation arrived at the following distillation of TST's overall purpose:

To add analytical and strategic value to the APHIS trade mission of maintaining and expanding trade while ensuring a biologically sound and consistent trade policy.

In other words, TST's role is to provide analytical and strategic guidance to help APHIS attain its broad trade-related goal of facilitating trade while maintaining our nation's biosecurity. To support APHIS' trade objectives, the AMT looks to the TST to provide:

analysis, communication, and representational and liaison services.

Of these three broad functions, the AMT placed the highest priority on analysis. The AMT viewed analysis as a critical element for strengthening APHIS' negotiating strategies, developing and executing tactical actions (on both a country- and issue-specific basis) to support identified objectives, and ensuring strategic consistency among

APHIS units, with other USDA agencies, and with USTR.

TST Today

While the TST mission has not changed a great deal since its creation in 1992, the emphasis has shifted slightly toward providing greater analytical support for APHIS trade initiatives. To this end, TST continues to be the central office for tracking pending trade issues and initiatives, as well as working to ensure that APHIS' concern for protecting U.S. agriculture's biosecurity is considered by FAS and the Department when developing and implementing broader trade policies.

TST staff interacts almost daily with FAS and USTR, providing a key line of communication between the Agencies. For example, weekly meetings are held on Tuesdays to review "front burner" issues, which in turn, are forwarded to the Secretary's SPS Action Team. Also, SPS strategy meetings, involving APHIS, FAS, and other MRP agencies, are held the first Wednesday of each month in Riverdale.

A key element in TST's success is its close working relationship with each programs' Trade Policy Liaisons (TPL), who consist of professionals from VS' National Import/Export Center and PPQ's Phytosanitary Issues Management Team. TPL's help maintain a linkage between their home offices and TST, and also send representatives to each weekly and monthly intra-departmental SPS meeting.

Generally speaking, TST has provided several unique services which, when taken as a whole, help ensure APHIS'

leadership in managing SPS issues. First, TST has been responsible for coordinating intra- and interagency action on a number of high profile SPS trade issues--issues that involve multiple offices and require a high level of communication and teamwork.

Second, TST fills a vacuum in APHIS and the regulatory community in terms of leading the Agency toward compliance with our international trade obligations, namely the WTO- and NAFTA-SPS agreements. To this end, the TST has taken the lead in providing to headquarter staffs, fields offices, industry, and other interested groups guidance, information, and analysis on our SPS commitments.

U.S.-Chile Trade Issues: Where does APHIS fit in?

Introduction

Chile has been in the headlines recently because of the importance it stands to play in the Clinton Administration's strategy to expand regional free trade. If the Administration has its way, Chile will soon join NAFTA, marking the next step in realizing creation of a Free Trade Agreement for the Americas (FTAA) by the year 2005. While earlier efforts to include Chile in NAFTA met with congressional resistance, the recent visit of Chilean President Eduardo Frei to Washington February 26 and 27, 1997, has quickened the Administration's desire to seek "fast track" negotiating authority this year from Congress.

Achieving the Administration's regional free trade objective and USDA's goal of doubling exports by the year 2000 will require continued APHIS participation.

APHIS' trade strategy, therefore, must consider these broader policy objectives when developing and implementing its own trade objectives.

Why Chile?

Chile is the cornerstone in the Administration's strategy to influence the timetable and pathway for creating an FTAA by the year 2005. Chile attained this status because of its advanced economy and its own desire to solidify and expand its recent achievements by joining NAFTA.

Chile is widely recognized as having the most open, stable, and liberalized economy in Latin America, with a market-based economic system in which the private sector is the engine of growth. Trade liberalization, capital and labor market reforms, privatization, and the creation of a regulatory framework have deepened since the late 1980s, paving the way for sustained rapid growth. Growth during the past six years has averaged 7.5 percent annually and should be sustainable over the medium-term. Inflation has been in the single-digit range since 1994. Unemployment is in the range of 4.5 to 6.0 percent. Social developments have been impressive. Life expectancy at birth, infant mortality, malnutrition, educational attainment, and overall literacy are more similar with higher income countries than the developing world.

During its rapid ascension to becoming a higher income nation, Chile has closed several regional trade deals. Today, Chile has bilateral free trade agreements with both Canada and Mexico and is an associate member to the South American Common Market (Mercosur), consisting

of Brazil, Argentina and Uruguay. Clinton Administration officials and others fear that the United States is in danger of being left behind as Mercosur continues to expand in South America, possibly overcoming NAFTA.

US/Chile Agricultural Trade

Over ten percent of Chile's export earnings are derived from agricultural exports. In 1996, the United States imported over \$1.2 billion worth of agricultural products. Fresh fruits and vegetables accounted for nearly a half of all of these imports, \$428.3 million. The value of fresh fruit imports expanded by 33 percent compared with 1995 figures. According to Chilean trade association figures, 41 percent of all fruit and vegetable shipments were destined for the U.S. market (1994 figures).

Other key imports from Chile: forest products, \$173.3 m. (up 60% over 1995) fruit/vegetable juices, \$70.7 m. (68%) salmon, \$87.3 m. (35%) planting seeds, \$53 m. (6%)

Chile has several unique geographic characteristics that provide comparative advantages to its agricultural sector.

Although only 7 percent of the land is arable, Chile's most fertile growing areas have a temperature (mediterranean) climate conducive to commercial production.

Because Chile is located in the southern hemisphere and has an opposite growing season, it is able to supply our market with fresh fruits and vegetables during winter when domestic supplies are scarce.

Chile's island-like quality affords producers a high level of sanitary and phytosanitary protection, allowing Chilean products to meet U.S. sanitary import requirements. With a desert to the north, the Andean range to the east, Pacific Ocean to the west, and Antarctica to the south, Chile is isolated from many diseases and insects found elsewhere in South America.

APHIS' SPS Role

In line with the notion that free trade agreements will result in increased U.S. exports, the Department has developed a long-range trade strategy aimed at doubling agricultural exports by the year 2000 (over 1994 figures). APHIS plays an important role in helping achieve this departmental objective.

APHIS, because of its technical and scientific expertise in developing and enforcing import regulations and protecting U.S. agricultural health, plays a key role in assessing whether another country's SPS restrictions are justifiable. As trade agreements phase out tariffs and quotas, SPS restrictions are being used by some countries as a pretext for protecting domestic producers or discriminating against certain exporters. With the rise in SPS barriers, APHIS has begun to work more closely with other USDA agencies to help overcome foreign market access problems attributed to their unjustifiable use.

APHIS' Trade Issues with Chile

In the case of Chile, APHIS has a history of annual technical engagements that have resulted in Chile's favorable export figures mentioned above. Bilateral negotiations from 1990 to 1995 led to

the negotiation of requirements allowing Chile fruits and vegetables to enter the United States. After 1995, consultations between APHIS and its counterparts in Chile were conducted by APHIS post in Santiago on a bimonthly basis or more often as needed.

In anticipation of the Chilean presidential visit to Washington in February 1997 (2/26-2/27), the Administration was anxious to identify outstanding market access issues between our countries, and use momentum generated by the trip to revisit, and possibly resolve, Chile's SPS barriers to U.S. exports. For APHIS, this meant reviewing Chile's plant and animal health-related import requirements to assess whether that country's measures were in accordance with WTO-SPS standards and principles.

During the visit, President Clinton said he would ask Secretary Glickman to travel to Chile this spring to initiate a mechanism to resolve agricultural trade issues. In anticipation of a Secretarial visit, APHIS has begun a preliminary review of its outstanding SPS issues with Chile.

Based on this review, APHIS believes that future consultations with its Chilean counterparts should focus on each countries' approaches to implementing international SPS standards and principles. Only through mutual agreement on the application of WTO-SPS commitments (and NAFTA-commitments if Chile joins NAFTA) can there be lasting resolution of our countries' commodity-specific market access disputes.

Some of the principles that APHIS would like to discuss with its counterparts include the following: Pest Free Areas and Equivalency: The principle of "pest free areas" (PFA) states that countries shall recognize the status of free areas in which a specific pest does not occur. PFA falls under the broader principle referred to as Regionalization. The equivalency principle states that countries shall recognize as equivalent those phytosanitary measures that are not identical but which have the same effect.

Minimum Impact: The principle of "minimal impact" states that phytosanitary measures shall be consistent with the pest risk involved, and shall represent the least restrictive measures available which result in the minimum impediment to the international movement of commodities and conveyances.

National Treatment and Transparency: The principles of "national treatment" and "transparency" state that regulations shall be applied without discrimination between domestic and imported consignments, that imports should be afforded national treatment and that countries shall make available to trading partners the rationale of their requirements.

In short, APHIS believes that future bilateral discussions should focus on establishing a common understanding of each country's interpretation and application of international SPS agreements rather than narrowly focusing on individual commodity access disputes. In so doing, APHIS will have helped to ensure that trade under an

expanded NAFTA will be fair and based on international principles and standards.

Overview: "Fast Track" Authority and How It Works

The term "fast track" is used to refer to several related procedures used for certain trade negotiations and for congressional consideration of some trade agreements. These procedures are codified at 19 U.S.C. 2191, 2192, 2902, and 2903, which taken together effectively delegates authority from the legislative branch (which has exclusive constitutional authority over regulation of foreign commerce) to the executive branch, allowing the executive branch to conduct trade negotiations without having to subject these agreements to typical congressional debate and amendment. These procedures restrict congressional consideration by requiring:

Congress to vote only "yes" or "no" with no amendments to a completed trade agreement and implementing legislation bringing existing U.S. laws and policies into conformity with the agreement,

A yes or no vote within 60 legislative days after the agreement and implementing legislation are presented to Congress by the Executive branch.

Both the agreement and domestic implementing legislation is written by the Executive branch, bypassing regular congressional committee procedures.

Supporters of the fast track concept argue that Congress must waive its committee procedures and floor amendments on trade agreements to provide U.S. trade negotiators with

credibility that terms they negotiate with other countries will not be re-opened by Congress. Supporters further argue that by preventing amendments and limiting Congress' role in overseeing negotiations, fast track procedures provide political cover Congress needs to vote on a trade deal that incorporates politically divisive compromises made in one area of negotiation needed to make gains in others. According to this notion, "fast-track" serves as a political mechanism whereby unpopular trade-offs can be made in exchange for the greater good derived from the overall trade agreement.

International Plant Protection Convention (IPPC)

Status of Negotiations

Background

In October 1995, FAO member countries that are signatories to the International Plant Protection Convention (IPPC) agreed on the need to revise the Convention to meet the changes that have occurred in global agriculture and to meet the needs of the WTO SPS Agreement. In particular, the WTO SPS Agreement calls for the use of internationally accepted standards in trade, recognizing the FAO/IPPC as the source of phytosanitary standards and plant quarantine expertise. The process of negotiating changes to the IPPC text is well underway with the most recent discussions occurring in Rome on January 13-17, 1997. This report provides an overview of the January consultations, including a summary of key issues.

APHIS Participation

An APHIS team participated in the week-long technical consultations. The APHIS negotiating team took the initiative in collecting, developing, analyzing and drafting APHIS negotiating positions and vetting these positions with a PPQ core group, the PPQ Deputy's Office, Industry Advisory Group (IAG), National Plant Board Council, grain industry groups (NAEGA), FAS/USTR, FGIS, and a Federal interagency group addressing noxious weed issues (FICMNEW). Also, a Federal Register notice describing the revision process was published in early February, inviting public comments and input into the revision process.

At the international level, APHIS has maintained close communication with a number of its trade partners to share views and build common ground. These efforts to build common ground with a number of foreign delegations are and will continue to be critical, strategic steps for advancing U.S. positions in the IPPC/FAO meetings.

Status of Negotiations

Although the U.S. team was largely successful in promoting its positions on key issues, the Consultation as a whole was unable to complete the task of developing a final revised text to submit to FAO for approval. As a result, it is expected that the Committee on Agriculture (COAG) will establish an open-ended Working Group during its meeting April 7-11, 1997 to attempt to finalize the revision. It will be incumbent upon this Working Group to develop a final text if a revised IPPC is to be approved by FAO in Council.

(June, 1997) and Conference (November, 1997). At least two years will be required for FAO to reconsider the issue if the revision cannot be considered during the 1997 sessions.

Status of Key Issues

The key issues discussed at the January consultations included:

Regulated Non-Quarantine Pest Issue
Phytosanitary Certification Technical justification for requirements
Proposed Role of Regional Economic Integration Organizations in the IPPC
Proposed IPPC Commission Concept

Each of these issues are discussed below.

1. Regulated Non-Quarantine Pest Issue

The existing Convention addresses plant protection in broad terms, but its interpretation and usage has been particularly important with respect to quarantine pests. While the Convention may have been primarily focused on controlling the spread of quarantine pests, the Convention also addressed, albeit in a vague and ambiguous way, "other injurious pests." For example, the model phytosanitary certificate contained in the Annex of the existing Convention refers to both quarantine pests (currently defined in an IPPC standard) and "other injurious pests." Part of the purpose for revising the Convention was to clarify the meaning of "other injurious pests" in order to ensure against trade abuses that may occur as countries imposed phytosanitary requirements for non-quarantine pests.

At this point in the technical negotiations, it is clear that most countries believe that the IPPC should cover injurious non-quarantine pests (formerly known as "other injurious pests"). The understanding is that injurious non-quarantine pests are pests which may be widespread in the importing country. True quality pests (those reducing grade, such as pests causing cosmetic "damage") are universally believed to be outside the scope of the Convention. Equally important, countries seem to be in favor of limiting the application of the concept of non-quarantine pests to pests that are officially regulated in the importing country and only those associated with propagative material.

2. Phytosanitary Certification

Changes to the model phytosanitary certificate are under consideration. Unfortunately, discussions on whether to include the certificate within the Annex of the Convention or as a stand alone standard (referenced in the Convention) prevent the delegations from entering into the more substantive debate on changes to the certification language. The U.S. view is that the model certificate should be separated from the Convention as a stand-alone standard in order to allow for greater flexibility and clarity to understand, use, and amend the certificate without having to re-open the text of the Convention--a time consuming and administratively burdensome process.

The existing phytosanitary certificate covers both quarantine significant pests and a category of pests referred to on the phytosanitary certificate as "other injurious pests." The current language on

the phytosanitary certificate states the following: "This is to certify that the plants or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests; and that they are considered to conform with the current phytosanitary regulations of the importing country."

"Other injurious pests" may be considered to include quality pests or pests which may not be exotic to the importing country, or pests for which the quarantine status cannot be determined. The interest in revising the certifying language is in part driven by the ambiguity of what is meant by "other injurious pests."

The U.S. is in favor of revising the current language on the phytosanitary certificate. Preferred language on the certificate is: "This is to certify that the plants or plant products described above are considered to conform to the current Phytosanitary requirements of the importing country."

3. Technical Justification

The U.S. is strongly in favor of tightening the text of the Convention to ensure that phytosanitary requirements are technically justified. This has significant implications for key concepts such as "phytosanitary measures," "regulated articles" and "regulated pests."

Early attempts to introduce language that would make risk analysis the basis for technical justification met disfavor, particularly from developing countries

which viewed risk analysis as a sophisticated, resource intensive process that could only be performed by developed countries. The U.S. will seek language that ties key concepts in the IPPC to the technical justification. This is a critical technical objective for the U.S. in the revision process. Without a technical justification, countries have no point from which to begin to discuss differences.

4. Proposed Role of Regional Economic Integration Organizations (REIO)

The European Union (EU) and FAO Legal Counsel introduced the concept of having the amended Convention recognize REIOs. This proposal seeks to recognize the right of an economic block to vote on behalf of its members when it has been provided with the competency to do so by its members. Proposed language makes clear that there would be no chance of double voting. However, the issue of mixed competency makes it possible for either the member states or the organization to vote and to be bound as contracting parties to the convention within the limits of their competency. The purpose of this proposal is to recognize and bind the EU Commission to the rights and obligations of the IPPC. The EU is an FAO member but cannot be considered to be a contracting party under the current Convention.

The REIO issue emerged as a major point of contention at the January consultations. An open-ended working group was established to discuss the REIO issue in detail with the aim of finding language acceptable to the concerned parties. At the heart of the debate over the REIO issue was the question of EU and member state

competency in implementing plant quarantine and phytosanitary obligations. The frustration that countries have in dealing with the EU and its member states on bilateral issues was fueling the debate. Frustration exists because of the mixed competencies between the EU Commission and the powers of its member states.

There was agreement at the January Consultation to replace the words "regional economic integration organizations" found throughout the draft Convention text with the expression "member organizations of FAO" and wherever possible to simplify the wording to "contracting parties." Also, a proposal was made to incorporate language into the Convention regarding the rights and obligations of contracting parties.

Generally, countries recognize advantages of having the EU as a signatory to the IPPC rather than operating outside this basic international quarantine and phytosanitary framework. Binding the EU to the IPPC would help prevent the EU from escaping from international phytosanitary obligations, including internationally accepted standards, which other FAO members must adhere to under the Convention.

5. IPPC Commission Concept

Interest in revising the Convention was in part driven by a perception that the existing FAO framework for developing IPPC standards was inefficient. The proposal to establish an IPPC Commission, modeled after the Codex Commission, is one proposed option for strengthening the current FAO/IPPC standard setting procedure.

The United States, along with the other countries, expressed support for the objective of strengthening the IPPC's ability to develop and adopt phytosanitary standards. This is consistent with the directions taken by WTO under the SPS Agreement which calls for the increasing use of internationally accepted standards in trade as way to harmonize countries' SPS measures.

Many delegations, like the United States, are in full agreement with the need to establish a more functional process for developing standards, but are hesitant about supporting the Commission without knowing more about the institutional and financial details. Because of these cost and non-technical matters related to the Commission concept, most delegations were circumspect in supporting the Commission concept but strong in noting the real need from a quarantine and SPS standpoint to establish an effective and efficient standard setting system within the IPPC/FAO framework.

It was noted that it may take several more years before the amendments (if accepted) to the Convention go into force because of the member country legislative processes. For this reason, consideration was given to adopting an interim procedure for developing and adopting standards. The current ad hoc process is unappealing to most delegations. It was proposed by FAO Legal Counsel that this interim measure can be taken under the FAO Constitution Article 6 with approval by Council and Conference. However, both Japan and the EU reserved their endorsement of this interim idea.

Next Steps

The next step in the FAO process is to return to the IPPC revised text in mid-April 1997. At that time the FAO Committee on Agriculture (COAG) will meet for a week to review a variety of agricultural issues, among which is the topic of revised Convention text. Given that the current draft text is insufficient to present to this next level for review and approval, it was agreed at the January technical consultations to propose that a working group of technical officials meet for 3 days of intense work and negotiations to produce a final draft text which would be submitted to COAG for review and approval at the end of the week.

INTERNATIONAL MARKET EXPANSION AND TRADE NEGOTIATIONS (Animal Health Perspectives)

Agricultural Trade

The United States annually produces about \$250 billion worth of domestic agricultural products. Of this, about \$60 billion is exported. This export activity employs around a million people and consistently runs a positive balance of trade. About 80 percent of agricultural exports are of plant origin and about 20 percent are of animal origin. Future market expansion for animal agriculture will depend on exports. The mission of the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) includes retention and expansion of export markets.

Trade Barriers and International Law

Over the years, many barriers to U.S. agricultural exports have been camouflaged as health-based sanitary-phytosanitary (SPS) measures. This explains U.S. eagerness to support the World Trade Organization (WTO) as the implementing body for the SPS principles of the General Agreement on Tariffs and Trade (GATT).

The WTO SPS Agreement, effective in January 1995, and ratified by about 150 nations, carries the force of international law. It requires that import regulations be scientifically sound; based on documented (transparent) disease risk factors; non-discriminatory; in accord with the principles of equivalence of sanitary measures, national treatment, risk assessment, and regionalization; and in harmony with international standards.

The WTO has assigned responsibility for international animal health standards to the Office International Des Epizooties (OIE). These standards are developed by consensus of almost 150 nations and do not necessarily reflect the positions of individual countries.

APHIS must move rapidly toward compliance with the WTO SPS Agreement and address OIE-generated international standards when developing import requirements and policies.

How Does an Import-Export Matter Become an SPS Trade Issue?

There are complex bureaucratic challenges involved in identifying differences between day-to-day import-export operations, technical discussions, and true "SPS Trade Issues." Routine import-export operations, technical discussions, and binational technical

working groups address disease control, and regulatory matters dealing with specific shipments, import-export requirements, and the wording of health certificates and export protocols.

All import-export matters involve trade. True "SPS Trade Issues," however, require high level, sometimes politically sensitive, international discussions and/or negotiations. Import-export matters become SPS Trade Issues" when escalated from the technical level because:

Technical working groups become stalemated in discussions with foreign counterparts;

Technical experts recognize that foreign counterparts are proposing import requirements that are actually trade barriers masquerading as health concerns;

Nations or trading blocs threaten retaliation for U.S. trade policies; Nations or trading blocs link movement on related commodities;

Major new imports, that do not qualify under existing U.S. policies and regulations, are proposed during technical discussions;

Technical issues surface within the context of major bilateral or multilateral equivalency negotiations or trade discussions. When this happens, they are best referred to technical experts for discussion and possible resolution;

In addition to the bottom-up escalation described above, routine import-export matters become international "SPS Trade Issues" when the Administration,

members of Congress, or high level USDA Officials make commitments at international tribunals or otherwise become involved.

What is the Role of Veterinary Services in Trade and SPS Issues?

Trade and SPS issues are receiving increased attention and activity at all levels of government including U.S. embassies abroad. Thus, there is a continually growing need for coordination and communication among the Federal and State Agencies and the many people involved in representing U.S. interests in international agricultural trade.

On trade issues or international negotiations, APHIS must follow the lead of the Foreign Agricultural Service (FAS) which in turn gets guidance from the Office of the U.S. Trade Representative (USTR) which operates out of the Executive Office of the President.

Within APHIS, Plant Protection and Quarantine (PPQ) handles the majority of import-export operations. When it comes to actual "SPS Trade Issues," plant health (phytosanitary) issues usually outnumber animal (sanitary) issues by more than five to one.

On the animal side, Veterinary Services (VS) field personnel and Import-Export Staff annually handle thousands of import requests and export certifications. Unless something goes wrong, however, less than one percent of these escalate into true "SPS Trade Issues" that must be addressed at higher levels within the USDA and Federal hierarchy.

In the current rapidly changing and highly competitive global trade environment, VS manages import-export operations, conducts binational technical trade discussions and negotiations and provides animal health consultations with many countries. They work closely with colleagues in member countries of the North American Free Trade Agreement (NAFTA), the Free Trade Area of the Americas (FTAA), and the Asia-Pacific economic Cooperation (APEC) forum and participate in equivalency discussions with the European Community.

The National Center for Import and Export (NCIE)

The NCIE coordinates VS policies, practices, regulations, and procedures related to importation and exportation of animals and animal products, including germ plasm.

The mission of NCIE is to enhance trade and expand markets abroad by assuring that exported animals and animal-related commodities present minimal health hazards and meet the sanitary requirements of recipient countries and protect U.S. livestock from exotic diseases through science-based, workable import requirements.

The Import-Export Animals Staff develops requirements for entry of animals and germ plasm and negotiates export procedures that permit APHIS field staff to certify that exported animals and germ plasm meet standards of recipient countries.

The Import-Export Products Staff deals with health certificates for U.S. exports of animal-derived materials. They also

monitor the animal health aspects of importations of meats, poultry, milk, casings, and other animal products, as well as organisms and vectors that may be included in diagnostic specimens and biological materials imported for research or vaccine production.

The NCIE has regulatory, advisory, and trade functions. In addition to articulating and enforcing regulations, NCIE staff provide advice to importers and exporters, and communicates regularly with representatives of U.S. agricultural organizations. They recommend import-export policies and regulations and provide APHIS staff, management, and field personnel, and other government agencies with recommendations and briefings on import-export matters. On the trade side, they work out animal health requirements with international trading partners, and provide scientific and technical background for high level negotiations. NCIE also works very closely with the Trade Support Team.

New Obligations

Given the changing import-export trade environment, APHIS must adjust its activities to fulfill a number of obligations including: Seeing that both international obligations and U.S. national interests are pursued aggressively in the development of import-export requirements; Assuring that the federal-state-industry-practitioner-academic partnership is fully utilized through pre-negotiation consultations and strengthened animal disease monitoring-surveillance-and reporting systems; Participation in development of international standards and providing opportunity for U.S.

industry input into the OIE process; Preplanning, preparation, and training for accession of new people into governmental representation in the international trade arena; and Clearly delegate responsibility and authority to ensure that these challenges are efficiently and effectively addressed.

The Role of Other Federal Agencies

Other Federal Agencies also have obligations to clarify and adjust their missions, activities, and organizational structures to accommodate the changing global trade environment.

APHIS' Role before International Standard-Setting Bodies

Introduction

In 1996 and 1997, APHIS officials will have participated in several international standard-setting activities of the Office of International des Epizooties (OIE), the Secretariat of the International Plant Protection Convention (IPPC), and the North American Plant Protection Organization (NAPPO). Given the substantial resources devoted to these activities, some have begun to question its utility.

Questions aside, what is certain is that APHIS should continue to be the lead agency in fully participating in worldwide animal and health standard setting activities. Need for this total APHIS engagement is all the more compelling considering the explicit mandate given the OIE and IPPC to establish standards to use in settling agricultural trade disputes before the World Trade Organization (WTO). In

short, APHIS must work diligently to assure that America's sanitary and phytosanitary (SPS) concerns are reflected in finalized standards and guidelines currently under development.

Broad Recognition of APHIS' International Role

APHIS accepts this challenge. APHIS management, during its meeting to clarify the agency's international role, stated that it is, "committed to providing leadership in the elaboration and implementation of the SPS principles established under the WTO". APHIS is not alone in recognizing this role.

In September, the U.S. Trade Representative's Advisory Group on Agriculture recommended that the US government, "devote greater resources to, and play an active role in the development of international sanitary and phytosanitary standards to ensure that these are consistent with U.S. public health and agricultural trade objectives," and to "support and encourage organizational strengthening of the Codex ..., the OIE, and the IPPC," and to "place high priority on the continuation of WTO Agricultural negotiations, scheduled for initiation in 1999."

The advisory group further recommended that these organizations receive expert technical support from the United States, and that U.S. trade and agriculture officials participate in these organizations at a high level, and ensure greater interaction between these organizations and the WTO. APHIS has both the international network and expertise to provide this function.

In a March of last year, the Agricultural Technical Advisory Committee for Trade in Fruits and Vegetables (ATAC), adopted the following resolution in which the members: ...highlighted the increasingly important area of phytosanitary-based access barriers to U.S. horticultural products and expressed the view that the Department should dedicate additional resources in to address the full range of outstanding issues in a more timely manner. The committee was clear in expressing its support and appreciation of the efforts to date of the APHIS Issues Management Team and FAS in dealing with the large number of outstanding trade issues. However, the committee concluded that more departmental resources were clearly needed in this important arena.

Statutory Authorities

Several legal authorities establish APHIS as the agency responsible for representing the United States before international bodies -- responsibilities which include working on standard setting activities.

International Treaty Obligations: Treaties with the IPPC and OIE entered into force for the United States on April 4, 1991 (superseding a 1952 treaty) and July 25, 1975, respectively. Under APHIS' delegation of authorities (7 CFR 371), the deputy administrator of PPQ is charged with, "responsibilities of the United States under the [IPPC]". Similarly, the deputy administrator of VS is responsible for U.S. obligations to the OIE, which states that members provide to the OIE committee "technical permanent delegates ... or their alternates". Because of the specialized focus of the OIE on animal health,

APHIS is the agency recognized for implementing the terms of this treaty for the U.S. government.

A primary task of IPPC members is to participate in developing international standards for plant quarantine regulations, and in turn, using them as a basis for developing their national standards. To this end, the IPPC created the "Principles of Plant Quarantine as Related to International Trade", which were endorsed by the members in 1993. The interpretation and implementation of these principles relate directly to the phytosanitary provisions established in the WTO.

In similar fashion, the OIE encourages its members to participate in international standard-setting activities, and to base domestic zoosanitary measures on these standards. An important function of the OIE agreement is to "ensure that international trade in animals and animal products is governed by technically justified health conditions" The OIE's International Animal Health Code Commission works directly with regulatory matters affecting international trade.

APHIS also has obligations under GATT. The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) entered into force for the United States when WTO was officially created January 1, 1995. The text of the SPS Agreement was signed April 15, 1994. Article 3 of the Agreement reads:

Members shall play a full part within the limits of their resources in the relevant international organizations and their subsidiary bodies, in particular the

Codex Alimentarius Commission, the [OIE], and in the international and regional organizations operating within the framework of the [IPPC], to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures. The Committee on Sanitary and Phytosanitary Measures ... shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 12 states that the SPS Committee "shall maintain close contact with the ... [IPPC and OIE]... with the objective of securing the best available scientific and technical advice for the administration of this Agreement ...".

Legislative Mandates: A direct line of authority mandating APHIS participation in standard-setting activities stems from an amendment to a 1979 trade law.

Legislation implementing GATT was signed into law 8 December 1994. This act amended title IV of the Trade Agreements Act of 1979 by adding a new subtitle F, "International Standard-Setting Activities." Subtitle F requires the President to designate an agency to be responsible for informing the public of the sanitary and phytosanitary standard-setting activities of each international standard-setting organization. In accordance with this presidential designation, on September 20, 1996, APHIS published a list of activities it would participate in with respect to the OIE and IPPC in 1997. This designation explicitly recognizes

APHIS' leading role in shaping international sanitary and phytosanitary standards that will affect agricultural trade.

APHIS' Pacific Rim SPS Strategy

Background

APHIS recognizes the countries in the Pacific Rim region as strategically important agricultural markets. Providing effective support to Departmental trade expansion goals for this region, particularly leadership in resolving SPS barrier issues, will depend to a great extent on our ability to cultivate relationships with regulatory counterparts in the region. Generally, APHIS views relationship building as crucial for the following reasons:

Allows us to share U.S. regulatory views, positions, and approaches to various trade-related quarantine issues (including views on risk analysis methodologies and techniques).

Creates possibilities for developing common positions relative to future sanitary and phytosanitary standards (i.e., OIE and IPPC consistent standards).

Improves our general understanding of our respective regulatory processes and fosters better technical cooperation and understanding on issues ranging from biotechnology, health certification procedures, environmental, and quarantine issues as they relate to trade between the United States and Asia-Pacific countries.

Establishes a basis of technical credibility and personal rapport between regulatory officials, necessary for discussing and resolving technical trade irritants at the technical level and preventing their escalation into formal trade disputes. This is especially important in an area of the world that culturally places a high premium on relationships.

Generally, APHIS sees the need to foster the exchange of ideas with various regulatory authorities in different parts of the world. Such a strategy has been taken by the Agency over the past years with a smaller group of countries (e.g., quadrilateral group) or through bilateral discussions. The need exists to broaden our level of interaction with other countries. The APEC creates a venue for such exchanges and relationship building.

APHIS' 6 Point Plan

The following are key points in the Agency's strategy for addressing technical trade issues in the Pacific-Rim:

1. Continue to Cultivate Bilateral Relationships: APHIS currently has bilateral meetings on a formal basis with Australia, New Zealand, Japan, People's Republic of China, Republic of Korea, and Taiwan. These bilateral meetings are primarily aimed at addressing agricultural trade issues through the negotiation of protocols for trade in plant and animal products. These bilateral meetings, usually occurring on an annual or bi-annual basis, are an important venue for raising high priority technical trade problems. The bilaterals rely on headquarter leadership and support from the Agency's attaches in these countries.

2. Actively Support and Participate in APEC Activities: APHIS' position is that a forum involving plant and animal health officials from the APEC countries would establish an important venue for a) networking, b) influencing APEC country thinking on important standard setting activities, and c) creating opportunities to strengthen two-way communication and credibility on animal and plant health issues affecting trade. Also, APEC provides an excellent forum for working simultaneously, in a potentially efficient fashion, with a number of target countries at once. It is crucial that we use APEC-sponsored workshops and seminars as forums for discussing current WTO, IPPC, and OIE topics. This will help facilitate alliances and develop common ground for important topics under discussion in these organizations.

3. Emphasize use of APHIS Attaches in the Region: APHIS representation in the region includes four field offices, Canberra, Australia; Beijing, People's Republic of China; Seoul, Republic of Korea; and Tokyo, Japan. These offices are responsible for managing the entire spectrum of APHIS animal and plant health issues. The most prominent issues involve agricultural trade. This involves supporting ongoing discussions relative to protocols for trade in fruits, vegetables, horticultural products, seeds, grains, live animals, animal genetics, and animal products. Other APHIS overseas functions include monitoring or surveying foreign disease or pest conditions, monitoring or supervising in-country pre-clearance operations, representing USDA at regional and international meetings, providing technical expertise on animal and plant quarantine issues, and meeting with

government counterparts and international organizations to discuss a variety of animal and plant health issues affecting trade.

APHIS will continue to monitor activity in the region to evaluate the staffing and office needs of the region. It is important that we recognize cultural norms in the region and take this into account as we make our staffing plans. For example, in this region it often takes months or years of cultivating personal relationships before real business breakthroughs can occur.

4. Participate in Regional Organizations: The regional OIE and plant protection organizations offer additional partnership opportunities. Currently, APHIS has observer status in the Asia-Pacific Plant Protection Convention (APPC). Similarly, there are other strictly regional organizations such as the South Pacific Commission and Association of Southeast Asian Nations in which the United States is not a member but can participate as an observer.

5. Provide Leadership in International Standard-Setting Activities: There are a number of forums through which international standards are developed. APHIS personnel act as U.S. delegates to such organizations including the International Office of Epizootics (OIE) and the International Plant Protection Convention (IPPC). In the Asia-Pacific region, APHIS personnel participate in the regional OIE activities and have, as indicated above, official observer status in the APPC. APHIS will continue to work with these organizations and all their regional affiliates as well as participate actively in World Trade

Organization (WTO) SPS Committee activities.

6. Provide Technical Assistance: Technical assistance would help strengthen APHIS foreign relationships, ensure harmonized approaches, and create goodwill that may help in resolving trade problems as they emerge. To this end, APHIS sponsors, supports, and actively participates in workshops and meetings in the region. These serve as a forum for the exchange of information on international standards setting activities, WTO-SPS obligations, quarantine systems, risk analysis, and other regulatory issues. Such workshops and informational exchanges help promote harmonized regulatory approaches and systems. APHIS may also wish to consider offering technical assistance to APEC member countries to develop an electronic capability to post their proposed and final regulations on the INTERNET.

THE PROPOSED USDA REGIONALIZATION REGULATION

Introduction

The United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS) has proposed changing current regulations to adopt risk-based regional import requirements in accordance with the sanitary and phytosanitary (SPS) provisions of the World Trade Organization (WTO), the implementing authority of the General Agreement on Tariffs and Trade (GATT) which the Congress ratified in January 1995. This will be accomplished by completely rewriting Title 9 Part 92 of the Code of

Federal Regulations (9 CFR 92) and other parts of the CFR.

Intent of the Proposed Regulation

The proposed regulation is intended to preserve and expand U.S. markets abroad and encourage safe and flexible movements of animal related commodities into the United States from various regions of the world. It will facilitate trade, protect U.S. livestock and wildlife populations from exotic diseases and parasites, and fulfill U.S. obligations to international trade agreements.

Basis of the Proposed Regulation and Changes It Will Precipitate

These new standards represent a major departure from past practices. They have evolved due to new international trade paradigms resulting from advancing technology, changing global animal disease situations, formation of trading blocs, and national commitments to the GATT. In response to these changes, the USDA is proposing to evaluate hazards presented by proposed importations in the context of geographic and demographic boundaries as well as national and political borders. APHIS is also proposing to use regional risk classifications rather than previous criteria of disease-free or not-disease-free statuses determined on a country-by-country basis. Thus, the proposed regulation merges the concepts of regionalization and risk assessment.

The Concepts of Regionalization and Risk Assessment

The long prevailing notion that SPS measures are biologically and

scientifically most logical when levied on areas that are geographically homogenous with respect to animal disease distribution and animal health infrastructure has engendered the concept of regionalization. The process of regionalization, or division of areas into regions, permits importing countries to evaluate point-of-origin animal health status of proposed importations not only with respect to political boundaries, but also in terms of geographic and demographic entities comprised of parts of countries or groups of countries.

Likewise, for decades, the concept of assessing risk has underpinned regulatory decision-making in numerous sectors. Risk assessment consists of identifying risk factors and making a qualitative or quantitative evaluation of their seriousness prior to invoking risk-abatement procedures. For decades, APHIS has successfully excluded exotic diseases by conducting intuitive risk assessments based on educated guesses as to the magnitude of disease hazards and the most logical means of reducing the likelihood of their materialization. Contemporary international expectations now require these evaluations be equitably applied, probabilistic, scientifically sound, and transparent to the extent that they can be documented upon request.

Extent of the Proposed Regulation

This proposal deals only with new requests to import swine, ruminants, and related products. Existing conditions of trade will prevail for other species and for porcine and ruminant commodities currently entering the United States under present regulations. Subsequent proposed regulations will address similar

standards for horses, poultry and birds, and aquaculture products. The proposed regulation addresses 5 restricted domestic disease agents, innumerable exotic vectors, and 48 exotic disease agents (including 23 exotic diseases not addressed in previous regulations because they were effectively excluded under regulations designed to prohibit the entry of foot-and-mouth disease and rinderpest). It outlines general SPS provisions for importation of live animals, animal products, semen, and embryos into the United States; establishes criteria for assigning risk levels to exporting regions; presents preliminary risk classifications for 215 countries with respect to restricted disease agents; and lists risk-management options that can be invoked to reduce risks to negligible levels. With the exception of the State of Sonora in Mexico, only individual countries are classified. However, procedures are outlined for receipt of applications for classification of trading blocs and regions comprising portions of one or more countries.

Relationship of the Proposal to International Trade Agreements

According to the GATT and WTO, imports requirements must be transparent; equitable; in harmony with international standards; in concert with the concepts of equivalence and regionalization; and founded on scientifically based risk assessments. APHIS believes the proposed regulation meets these requirements. It outlines U.S. intentions for addressing regionalization and risk assessment, but does not detail mechanisms for implementing obligations to transparency, equitable treatment,

equivalence; or harmonization with international standards. However, APHIS will comply with the spirit and letter of WTO guidelines as required by the Congress in the Uruguay Round Implementing Act of 1994.

Opportunity for Public Comment

The 127 page proposed regulation (Docket 94-106-01) was published in the Federal Register on April 18, 1996. The public comment period ended on September 16, 1996. APHIS received over 120 comments in response to the proposed rule and all comments are currently being reviewed. Since APHIS must follow the conditions required by the Administrative Procedures Act, the publication of the rule in its final form is not expected any time soon. For this reason, APHIS is looking at viable options to allow fresh or frozen pork products from low risk areas, such as Sonora, to be imported into the United States. USDA will publish written responses to these comments in the Federal Register when the rule (or a modified version thereof) is published in final form. The details and general concepts of the regulation will be distributed widely and explained in detail. USDA officials, however, are prohibited from predicting exact content of the final rule, and from discussing or debating the relative merits of its many provisions until comments are evaluated and a final rule has been published.

Possible Actions on the Proposal

After review of the comments, the USDA has the following options: The regulation may be published as a final rule along with a preamble that responds to the comments; The regulation may be

finalized with minor changes; The proposed regulation may be withdrawn; or The docket may be withdrawn and rewritten to accommodate major changes and resubmitted as a new proposed regulation.

IMPLEMENTATION AND FUTURE ACTIONS

Because this regulation involves major paradigm shifts, the implementation of its policies and procedures will be challenging for U.S. industry groups, and State and Federal regulatory authorities. Considerable experience will be required before they are operating smoothly. Along with other countries, the United States is continually developing and expanding quantitative risk assessment methodologies, seeking standards and criteria for documenting qualitative risk assessments, and exploring mechanisms for ensuring Agency consistency in risk management procedures. The USDA and APHIS look forward to the international harmonization of requirements for global movement of animal-related commodities that will ultimately result from these efforts. It may take several years before the international community, through trial and error, can come together on standardized policies for managing the concepts put forth in the SPS provisions of the GATT and the WTO.

This proposed regulation is one indication of U.S. intentions to become actively involved in this complicated international learning effort.